

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DISTRICT COUNCIL 16 INTERNATIONAL  
UNION OF PAINTERS AND ALLIED  
TRADES, PAINTERS LOCAL NO. 3,

No. C 13-565 SI

Petitioner,

v.

LML ENTERPRISES, INC.,

Respondent.

**ORDER ADOPTING AND MODIFYING  
REPORT AND RECOMMENDATION  
GRANTING PETITIONER'S MOTION  
TO COMPEL ARBITRATION; STAYING  
ACTION PENDING ARBITRATION;  
ADMINISTRATIVELY CLOSING CASE**

On June 14, 2013, Magistrate Judge Cousins issued a report and recommendation (the "Report") in this case. The Report recommends granting petitioner's motion to compel arbitration, denying without prejudice petitioner's request for attorney's fees, and dismissing this action without prejudice. Although respondent was served with the petition to compel arbitration and summons, respondent failed to answer or otherwise respond.

The Report issued on June 14, 2013. Pursuant to 28 U.S.C. § 636(b)(1), either party had fourteen days from service of the Report to file written objections. *See also* Fed. R. Civ. P. 72(b). The case was reassigned to the undersigned judge on June 14, 2013. On June 28, 2013, petitioner filed an objection to the Report. Petitioner objects to Judge Cousins' recommendation that this case be dismissed, and instead requests that the Court stay this action pending arbitration.


The Court has reviewed the Report and the docket in this case. The Court agrees with Judge Cousins' analysis regarding compelling arbitration and denying the request for attorney's fees without prejudice. With respect to petitioner's request for a stay as opposed to dismissal, where a dispute is

1 subject to arbitration under the terms of a written agreement, the Ninth Circuit has held that courts have  
2 discretion under 9 U.S.C. § 3 to dismiss or stay claims that are subject to an arbitration agreement. *See*  
3 *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988). The Court finds it appropriate to  
4 stay this action pending arbitration, and accordingly ADOPTS and MODIFIES the Report as follows:  
5 the Court GRANTS petitioner's motion to compel arbitration, DENIES WITHOUT PREJUDICE the  
6 request for attorney's fees, and STAYS this action pending arbitration. The Clerk shall administratively  
7 close this case.

8 This order resolves Docket Nos. 4 & 18.

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10 **IT IS SO ORDERED.**

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12 DATED: July 18, 2013

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SUSAN ILLSTON  
United States District Judge